# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# BANGALORE

REGIONAL BENCH - COURT NO. 1

**Customs Appeal No. 23496 of 2014**

[Arising out of Order-in-Original No. 02/2014-Commr. dated 25/08/2014 passed by Commissioner of Customs, Mangalore ]

**Bharath Timber And Construction Company**
Gpa Holder Sharanappa Adiveppa
Badawadagi, Age 72 Years, R/o, Hubli,
Next To Electric Grid, Karwar Road
HUBLI
KARNATAKA
580024

Appellant(s)

*VERSUS*

**C.C-Mangalore-cus**
NEW CUSTOMS HOUSE
PANAMBUR
MANGALORE
KARNATAKA
575010

Respondent(s)

**AND**

**Customs Appeal No. 21507 of 2015**

[Arising out of Order-in-Original No. 03/2015-Commr. dated 15/04/2015 passed by Commissioner of Customs, Mangalore ]

**Bharath Timber And Construction Company**
Gpa Holder Sharanappa Adiveppa
Badawadagi, Age 72 Years, R/o, Hubli,
Next To Electric Grid, Karwar Road
HUBLI
KARNATAKA
580024

Appellant(s)

*VERSUS*

**C.C-Mangalore-cus**
NEW CUSTOMS HOUSE
PANAMBUR
MANGALORE
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575010

Respondent(s)

**Appearance:**

Ms. Rukmani Menon, Advocate for the Appellant
Shri P. Rama Holla, Superintendent(AR) for the Respondent

**CORAM:**
**HON'BLE MR. RAMESH NAIR, JUDICIAL MEMBER**
**HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER**

**Final Order No: 20147-20148 / 2022**

Date of Hearing: 21/03/2022
Date of Decision: 29/03/2022

**Per : RAMESH NAIR**

These appeals are directed against the orders passed by the Commissioner of Customs, New Customs House, Panambur, Mangalore whereby the request of the appellant for endorsing advance authorisation numbers on the free shipping bills and for issue of NOC for considering the free shipping bills as shipping bills under Advance Authorisation Scheme which actually tantamount to conversion of free shipping bills into advance licence was rejected. The learned Commissioner rejected the request on the ground that firstly, the appellant have exported the goods from Karwar Port which is not authorised for which a prior permission ought to have been taken and secondly, on the shipping bills, advance authorisation number was not declared. Being aggrieved by the Orders-in-Original, the appellant filed present appeals.

2. Ms. Rukmani Menon, learned counsel appearing on behalf of the appellants submits that the appellant during the period of export repeatedly requested the Customs Department for export of their goods from Karwar Port under Advance Authorisation No.0710065592 and 0710075655. She submits that the Department has not responded any of their letter and lastly rejected their request by the impugned orders. It is her submission that the appellant's case is otherwise covered by Section 149 of the Customs Act whereby the exports shipping bill even if its free shipping bill can be converted into advance authorisation shipping bill for the reason that both the licences against which the appellant had been clearing the export were into existence and various correspondences with the Department were made for endorsement of advance authorisation and for issuing NOC. Therefore, the appellant have complied with the provision for export from Karwar Port and their letter to the Department ought to have been considered as request for permission for export from Karwar and also for conversion of free shipping bill to advance authorisation shipping bill. She submits that it is not only the appellant's repeated request but as per the inter-departmental correspondence under C.No.S-46/01/2008-CH dt. 04/02/2010 addressed to the Commissioner of Customs, New Custom House, Panambur, Mangalore written by Assistant Commissioner of Customs, Custom Division, Karwar, whereby the Assistant Commissioner endorsed the bona fide of the appellant as they have

good track record of their export from Karwar Port since more than 20 years and recommended to consider their request; despite this, the adjudicating authority has rejected the request of the appellant; therefore the impugned order is not sustainable. She placed reliance on the following judgments:-

i. CC, Tuticorin Vs. Thiru Arooran Sugars Ltd. [2014(307) ELT 248 (Mad.)]
ii. Carl Zeiss India Pvt. Ltd. Vs. CC&ST, Bangalore [2018(359) ELT 388 (Tri. Bang.)] – Upheld by the Hon'ble High Court of Karnataka reported in 2021(376) ELT 457 (Kar.).
iii. Parayil Foods Products Pvt. Ltd. Vs. UOI [2021 (375) ELT 486 (Ker.)]
iv. Gokul Overseas Vs. UOI [2020(373) ELT 49 (Guj.)]
V. Larsen & Toubro Limited Vs. UOI [2018(360) ELT 289 (Bom.)]

She submits that in these judgments, the conversion from free shipping bills to various schemes have been permitted by taking lenient view under Section 149 of the Customs Act, 1962.

3. On the other hand Shri P. Rama Holla, learned Superintendent(AR) appearing for the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both sides and perused records. The adjudicating authority has rejected the request of the appellant for issuing NOC for the purpose of EODC by DGFT on the ground that firstly, the appellant has exported goods from

Karwar without obtaining prior permission and secondly, the appellant are not entitled for conversion of free shipping bills to advance authorisation shipping bills as the appellant have not declared the Advance Authorisation number on the shipping bills.

5.1. We find that as regards the first issue, the appellant have been writing various letters to the Department for permission of export from Karwar Port against the subject advance authorisation. Some of the correspondences are referred below:-

| Date | Document |
|---|---|
| 17/09/2009 | Letter to Deputy Commissioner of Customs, Mangalore requesting for permission to export from Karwar Port against Advance Authorization No.0710065592 |
| 22/09/2009 | Letter to Commissioner of Customs, once again request for export from Karwar under Advance Authorization No.0710065592 |
| 13/11/2009 | Letter to the Deputy Commissioner of Customs, once again requesting for export from Karwar port under Advance Authorization No.0710065592 |
| 28/01/2010 | Letter to the Assistant Commissioner of Customs requesting for export from Karwar Port under Advance Authorization No.0710065592 |
| 18.03.2014 | Letter to Superintendent of Customs, Karwar requesting for endorsement of Advance Authorization No.0710065592 on shipping bills. |

| | |
|---|---|
| 25.03.2014 | Letter to Assistant Commissioner of Customs, Mangalore requesting for endorsing the shipping bills with Advance Authorization No.0710065592 and No.0710075655. |
| 25.07.2014 | Letter to the Commissioner of Customs, Mangalore requesting for endorsing the shipping bills with respect to Advance Authorization No.0710065592 and No.0710075655. |
| 19.08.2014 | Letter to the Assistant Commissioner of Customs, Mangalore reminder requesting for endorsement. |

From the above letters, it is clear that the appellant have been requesting the Department for permission to export from Karwar Port under advance authorisation. The Department has not given any response to various correspondences made by the appellant. Therefore, in our considered view, since no response from the Department, the permission deemed to have been received by the appellant. Accordingly, there is no objection exist for export of goods from Karwar Port.

5.2. As regards the endorsement regarding advance authorisation, the appellant is eligible for the same in terms of Section 149 which reads as under:-

> ***SECTION 149. Amendment of documents****. - Save as otherwise provided in sections 30 and 41, the proper officer may, in his discretion, authorise any document, after it has been presented in the custom house to be amended:*

> **Provided** *that no amendment of a bill of entry or a shipping bill or bill of export shall be so authorised to be amended after the imported goods have been cleared for home consumption or deposited in a warehouse, or the export goods have been exported, except on the basis of documentary evidence which was in existence at the time the goods were cleared, deposited or exported, as the case may be.*

5.3. From the plain reading of the above Section 149, it is clear that even though, it is discretionary but on certain conditions, the document can be amended even after the goods have been exported on the basis of documentary evidence which was existence at the time of goods were cleared for export. In the present case, the appellant had in possession of Advance Authorisation No.0710065592 dt. 26/06/2009 and Advance Authorisation N.0710065655 dt. 26/11/2010 and the exports of goods have been taken place from 30/06/2009 to 18/11/2010 and 27/12/2010 to 19/10/2012 respectively. Accordingly at the time of export of goods, the advance authorisations were very much in existence. More over the appellant have been making repeated requests to the Department for export of goods from Karwar Port under the aforesaid advance authorisations. Therefore, there were all the documents existing at the time of export of goods. On this basis, the appellants are clearly entitled for amendment in the shipping bills by conversion of free shipping bills to shipping bills under advance authorisation. The judgments relied upon by the appellant directly support their case. In the identical facts, it has been decided that the conversion of free shipping bill to the shipping bill under various schemes is permitted.

6. As per above discussion and findings, we hold that the appellants are entitled for conversion of free shipping bills to shipping bills under advance authorisation and for consequential effect such as issuance of NOC for producing before DGFT. Accordingly, both the impugned orders are set aside and appeals are allowed with consequential relief, if any, in accordance with law.

(Order pronounced in open
court on 29/03/2022)

**(RAMESH NAIR)**
**JUDICIAL MEMBER**

**(P. ANJANI KUMAR)**
**TECHNICAL MEMBER**

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